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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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WILLIAM A. MUNDELL
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Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE NOTICE OF
PROPOSED RULEMAKING FOR THE
ENVIRONMENTAL PORTFOLIO
STANDARD.

DOCKET NO. E-00000C-00-0377

EXCEPTIONS TO RECOMMENDED OPINION
AND ORDER

Pursuant to A.A.C. R14-3-110(B), Phelps Dodge Corporation, ASARCO, Incorporated and Arizonans for Electric Choice and Competition (collectively referred to herein as "AECC") hereby submit their exceptions to the recommendations of Administrative Law Judge Jane Rodda regarding the above captioned matter. ("Recommended Order").

On page 3, lines 9 and 10, the Recommended Order approving an Environmental Portfolio Standard Rule ("EPS Rule") states that by 2012 Load-Serving Entities must derive 1.2 percent of their total retail sales from qualifying sources. Pursuant to the EPS Rule, by 2012 Load-Serving Entities must derive **1.1 percent** of their total retail sales from qualifying sources. Therefore, the Recommended Order should be modified to be consistent with the EPS Rule.

On page 4, lines 1 through 4, the Recommended Order restates the concern of some parties that the EPS surcharge may not be sufficient for some Load-Serving Entities to meet their mandated renewable percentage under the EPS Rule, and as a result ratepayers may be faced with large deferred costs that the utilities might incur in meeting the mandate. Additionally, on lines 13 through 21, the Recommended Order states that although it is not the Commission's intent that ratepayers pay the surcharge and also be faced with high deferred costs, the Commission will re-

1 examine the required percentages, appropriate surcharge and the amount of the deficiency payment
2 in 2003 based on actual experience. The Recommended Order, however, fails to confirm that the
3 EPS Rule does not allow for deferred costs to be recovered by Load-Serving Entities. AECC,
4 along with other parties, reached an understanding that the EPS surcharge set forth in the revised
5 EPS Rule was intended to meet all costs and that ratepayers would not be responsible for any
6 deferred costs in the event the surcharge was not sufficient to recover the mandated renewable
7 percentages. AECC's understanding is consistent with R14-2-1618.B.2 which provides that "in no
8 event, however, shall the Commission increase the surcharge caps as delineated in R14-2-1618.A.2
9 above." Any attempt to interpret the EPS Rule as allowing the recovery of deferred costs would be
10 inconsistent with the agreement of the parties to this proceeding and the EPS Rule.

11 On page 12, lines 21 through 23, the EPS Rule provides for the EPS surcharge to be
12 assessed at the lesser of the per kWh charge or one of three fixed amounts. This provision should
13 be modified to clearly state that the EPS surcharge is capped at the specified amounts. AECC
14 suggests that R14-2-1618.A.2 be modified at page 12 line 22, to read "This monthly assessment
15 will be capped at the lesser of \$0.00875 per kWh or: . . ." Adding this language will eliminate any
16 confusion concerning the maximum EPS surcharge to be paid by ratepayers.

17 Lastly, the Recommended Order concludes that none of the proposed modifications are
18 substantive in nature. AECC agrees that based on its understanding of the proposed modifications
19 there are no substantive changes. However, if the Commission believes that the EPS Rule allows
20 Load-Serving Entities to recover deferred costs from ratepayers, this would amount to a substantive
21 change requiring the Commission to terminate the current proceedings and commence a new rule
22 making proceeding for the EPS Rule.

1 RESPECTFULLY SUBMITTED this 26th day of January, 2001.

2 FENNEMORE CRAIG, P.C.

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